

tion 9 of said Amended Senate Bill No. 4, as amended by said Senate Bill No. 63, reads in part as follows:

“At any time prior to the first day of March, 1935, the county commissioners of any county may, when authorized by the state relief commission, expend any part of the emergency relief fund or the county poor relief excise fund of such county for furnishing work relief and direct relief as defined in this act, to any or all persons in such county who are in a condition requiring it, anything in sections 3476 to 3496, both inclusive, of the General Code, to the contrary notwithstanding.”

Section 1 of said Amended Senate Bill No. 4, as amended by House Bill No. 7, defines direct relief as follows:

“c. The term ‘direct relief’ shall mean the furnishing of food, clothing, shelter, fuel and medical attention in the home.”

The purpose of the act being to provide emergency relief for the poor and unemployed, it should be construed liberally to accomplish its purpose. I do not believe that the word “home” was used in section 1 in such a literal sense that such relief could not be given to a child except in the home of its parents. I am of the view that the word “home” was used to distinguish from an institution for the care and relief of indigents. In the case of the family which you cite as an example, there would be nothing wrong in such family in using the \$5 00 of the \$20 00 received to pay the expenses of a child of the family at a health camp, and I am of the view that it would not be violative of the meaning of direct relief as defined in this act for the county commissioners to use a portion of an allowance to a family from the proceeds of bonds issued in anticipation of the county’s share of the so-called selective sales tax to pay the expenses of one of the children at a Y. M. C. A. camp for the purpose of arresting the development of tuberculosis in such child, even though this may mean a slight increase in the total amount ordinarily allowed such a family since the amount to be allowed is a matter within the discretion of the county commissioners subject to the approval of the state relief commission.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

3036.

BEER—NO TAX REFUND TO GOVERNMENT “C. C. C.” CAMPS.

SYLLABUS:

1. *There is no statutory provision authorizing the refund of taxes paid pursuant to the provisions of Section 6212-49, General Code, by reason of the fact that the beer is sold to government “C. C. C.” camps.*

2. *There is no statutory authority for a refund of crown or stamp taxes levied by the provisions of Section 6212-49a to 6212-49t, General Code, or wine stamp taxes levied by Section 6064-41, General Code, when such beer or wine is sold in federal "C. C." camps.*

3. *When refunds are being made pursuant to the provisions of Section 6212-49h, General Code, such refund may be made by issuing "wine tax stamps" if the taxpayer so requests; provided an amount equivalent to the par value of such stamps so redeemed is taken from the administration fund of the beverage tax law and placed in the wine stamp tax fund in the custody of the treasurer of state.*

4. *When refunds are being made pursuant to the provisions of Section 6064-42, General Code, such refund may be made in beverage tax stamps at the request of the taxpayer, providing an amount equivalent to the par value of such stamps is taken from the appropriate administration fund of the state treasurer and placed in the beverage stamp tax fund in the custody of the treasurer of state.*

COLUMBUS, OHIO, August 14, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion relative to the following matters:

"1. May the taxes levied under the provisions of Section 6212-49, on beer sold to the government 'C. C. C.' Camps be refunded to the distributor or retailer who sells the beer to them?

2. May the taxes levied and collected under the provisions of Section 6212-49a to 6212-49t, on beverages; and under the provision of Sections 41 and 42 of House Bill No. 1, on wine sold to the government 'C. C. C.' Camps be refunded in the manner therein provided, to the permittee who sells the beverages and wine to them?

3. When refunds are to be made on beverages and wine and under the provisions of Section 6212-49th, the Treasurer of State issues stamps of sufficient value to cover the refund, may he issue wine tax stamps for a refund of beverage taxes, or beverage tax stamps for a refund of wine taxes?

It is my understanding that these beers, wines and beverages are sold by the permittees to the camps at the regular prices, less the amount of taxes thereon."

In Section 6212-49, General Code, a tax was levied "on the sale or distribution in Ohio" of beer. Such section read:

"For the purpose of reimbursing the state for the expense of administering the provisions of this act and to provide revenues for the support of the state a tax is hereby levied on the sale or distribution in Ohio, of beer whether in barrels or other containers (excepting in sealed bottles) at the rate of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons to be collected and paid to the treasurer of state, as custodian of the undivided beer tax and permit fund in the manner hereinafter provided. The tax herein provided shall, as to beer made in Ohio,

be paid by the manufacturer. The tax on beer made outside Ohio shall be paid by the original consignee within this state."

An examination of the act of which such section was a part, (115 O. L., 110), fails to disclose any express statutory provision for the refund of any portion of the taxes paid pursuant to its provisions.

There is a well established rule in Ohio, that in the absence of an express statutory provision authorizing the refund of erroneous or illegal tax payments, such moneys may not be recovered when the payment was voluntarily made. *State ex rel. Pulskamp vs. County Commissioners*, 119 O. S., 504; *Whitbeck vs. Minch*, 43 O. S., 210.

Since no provision has been made by statute for the refund of such taxes, even if the assessment was illegal, I do not believe it is necessary to consider the question as to whether or not the tax was properly levied on the manufacture or sale of beer to government "C. C. C." camps, for the purpose of your first inquiry. I therefore express no opinion on such subject.

With respect to the matters referred to in your second inquiry, I might point out that in the act composed of Sections 6212-49a to 6212-49p, General Code, provisions have been made for the refund of sums paid for such tax under certain circumstances. In Section 6212-49f, General Code, the Treasurer of State is authorized to redeem and pay for unused or spoiled stamps or crowns. In Section 6212-49h, General Code, provision is made for refunds in cases where after stamps or crowns have been affixed the beer is sold in interstate or foreign commerce. I find no other authority for refunds in such act.

If a refund is authorized by such section it must arise by reason of the fact that the sale to a "C. C. C." camp is interstate or foreign commerce. Is the sale to a "C. C. C." camp either interstate or foreign commerce? Foreign commerce is commerce between the people in one nation with those in another nation. Interstate commerce is commerce between the several states, territories or Indian Tribes. *United States vs. Hill*, 248 U. S., 420; *Gibbons vs. Ogden*, 9 Wheat., 1.

Within the geographical limits of the state of Ohio there are certain areas over which the state has either no jurisdiction, or has limited jurisdiction, that is, although the state once had jurisdiction, it has ceded it to the federal government. (§§13774 to 13848, G. C.) It might be that a court would hold that the state of Ohio is without authority to tax sales made in territory which had been ceded to the United States. However, I fail to find any legislative act ceding the jurisdiction to the territory temporarily occupied by "C. C. C." camps to the federal government or to any other state. If the federal government were buying the beer, and issuing it to the members of such camps as a part of their rations, a different question would be presented, but I do not understand such to be the fact in the instant case.

I am, however, unable to conclude that a sale by a brewer or distributor to members of such camps is exempt from the tax. There is no language in the act authorizing refunds on such sales, for they constitute neither interstate nor foreign commerce, nor do they come within the inhibition preventing one government taxing the other.

Your third inquiry arises by reason of the specific language of Section 6212-49h, General Code. Such section reads:

"In case any bottled beverage upon the bottles containing which stamps or crowns have been affixed and cancelled pursuant to sections

6212-49a to 6212-49t, both inclusive, of the General Code, shall be sold and shipped in interstate or foreign commerce, the seller in this state shall be entitled to a refund of the actual amount of tax paid, upon condition that he make affidavit that such bottled beverage was so sold and shipped and furnishes from the purchaser a written acknowledgment that he has received such bottled beverage and the face value of the stamps or crowns thereon, together with the name and address of the purchaser, to the treasurer of state. Whereupon the treasurer of state shall issue to such seller stamps or crowns of sufficient value to cover the refund or shall refund the actual amount of such tax by payment made from an appropriation to him for the purpose of defraying the expense of administering sections 6212-49a to 6212-49t, both inclusive, of the General Code.

In addition to its other powers under sections 6212-49a to 6212-49t, both inclusive, of the General Code, the commission may promulgate rules and regulations providing for refund to manufacturers or dealers of the amount of tax paid on such bottled beverage which becomes unfit for sale, or any other legitimate loss which may occur, on proof of such loss. A copy of such rules and regulations shall be certified to the treasurer of state, and the treasurer of state shall make refunds as may be required thereby, by payments from an appropriation to him for the purpose of defraying the expenses of administering sections 6212-49a to 6212-49t, both inclusive, of the General Code."

Such section sets forth three methods of making such refund:

First: By issuing to the taxpayer stamps in amount equivalent to the stamps or crowns attached to interstate or foreign shipments or to beverage containers in which the beverage has become unfit for beverage purposes.

Second: By issuing to the taxpayer crowns in amount equivalent to such stamps or crowns so attached.

Third: By refunding cash from the administration fund equivalent to such stamps or crowns so attached.

It is thus seen that there is no requirement in such section that the refund be made by stamps or crowns of like kind.

If the treasurer of state paid cash to the taxpayer from the administration fund, the taxpayer could then immediately turn such cash so received back to the treasurer for the purchase of wine stamps. It would appear vain to require the manual act of the delivery and re-delivery of the cash when such transaction would be the exact equivalent of taking the money from the administration fund and placing it in the wine stamp tax fund, especially when the taxpayer has requested such manner of procedure. There is a presumption of law that the statute does not require a vain thing or that absurd consequences shall result from its enactment. *Lewis' Sutherland Statutory Construction*, Section 497; *Moon vs. Given*, 39 O. S., 661, Syl. 1 and page 663; *Hill vs. Micham*, 116 O. S., 549, 552; *U. S. vs. Ryan*, 284 U. S., 167, 175. It would, therefore, appear to me that the treasurer of state, within the authority of Section 6212-49h, General Code, could issue wine stamps in making a refund of beverage tax, providing he takes an amount of money from the administration fund created by such act and places such sum in the wine stamp tax fund. I have assumed herein that the refund in the form of wine stamps was requested by the taxpayer. I express no opinion herein concerning the question of whether the taxpayer is required to accept the refund in such manner.

You further inquire whether refunds may be made under Sections 6064-41

and 6064-42, General Code, of taxes levied on wine when such wine is sold to "government C. C. C. camps." Section 6064-42, General Code, in so far as material to your inquiry, reads:

"The tax hereby imposed shall be paid by the purchase of stamps. Such stamps shall be designed or procured and sold, purchased, affixed to each bottle or other container, and cancelled in the manner and at the time provided in sections 6212-49c to 6212-49g, both inclusive, of the General Code, relating to the tax imposed upon the sale of bottled beverages; excepting that the commission may by regulation provide that the denominations of such stamps shall represent the retail selling price of the wine, the sale of which is taxed thereby, instead of the amount of the tax thereon. The commission, the treasurer of state, the auditor of state, and county treasurers shall have and exercise with respect to the administration of the tax imposed by this act, all the powers and duties vested in or imposed upon said commission and other officers named herein by the provisions of said sections of the General Code; and manufacturers and bottlers of, and wholesale and retail dealers in wine, and railroad companies, express companies and other public carriers transporting shipments of wine shall be subject to, with respect to the tax hereby imposed, the same duties, and entitled to the same privileges as are provided by any of said named sections of the General Code. The treasurer of state shall pay for redeemed stamps issued pursuant to this act and shall make refunds pursuant to this act from an appropriation to him for the purpose of defraying the expense of administering this act."

You will note that in the portion of such section quoted, mention is made only of Sections 6212-49c to 6212-49g, both inclusive, which do not include the refund section of the beverage stamp and cap tax law (§6212-49h, G. C.) However, such section is mentioned in the following paragraph of such Section 6064-42, General Code. It is evident that the legislature intended the refunds provided for in this section shall be made as provided in Section 6212-49h, General Code. My answer to this part of your inquiry is, therefore, similar to that herein expressed with reference to the refunds from the beverage tax, except in issuing beverage stamps in exchange for wine stamps, it must necessarily be reciprocal.

Specifically answering your inquiries, it is my opinion that:

1. There is no statutory provision authorizing the refund of taxes paid pursuant to the provisions of Section 6212-49, General Code, by reason of the fact that the beer is sold to government "C. C. C." camps.
2. There is no statutory authority for a refund of crown or stamp taxes levied by the provisions of Sections 6212-49a to 6212-49t, General Code, or wine stamp taxes levied by Section 6064-41, General Code, when such beer or wine is sold in federal "C. C. C." camps.
3. When refunds are being made pursuant to the provisions of Section 6212-49h, General Code, such refund may be made by issuing "wine tax stamps" if the taxpayer so requests; provided an amount equivalent to the par value of such stamps so redeemed, is taken from the administration fund of the beverage tax law and placed in the wine stamp tax fund in the custody of the treasurer of state.
4. When refunds are being made pursuant to the provisions of Section 6064-42, General Code, such refunds may be made in beverage tax stamps, at

the request of the taxpayer, providing an amount equivalent to the par value of such stamps is taken from the appropriate administration fund of the state treasurer and placed in the beverage stamp tax fund in the custody of the treasurer of state.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3037.

APPROVAL—BONDS OF COLUMBUS CITY SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, August 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3038.

APPROVAL—BONDS OF PAINESVILLE CITY SCHOOL DISTRICT, LAKE COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, August 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3039.

APPROVAL—NOTES OF KEY RIDGE RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$1,500.00.

COLUMBUS, OHIO, August 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3040.

APPROVAL—NOTES OF WAYNE NO. 8 RURAL SCHOOL DISTRICT, CLERMONT COUNTY, OHIO—\$502.00.

COLUMBUS, OHIO, August 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*